IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 28417 of 2006(G)

OS.412/1994 OF ADL.SUB COURT, THALASSERY

PETITIONER:

UPPIMMERAKATH PUTHIYAPURAYIL
JAMSHEELA, ABDUNAVAS, AGED 22 YEARS,
D/O.MUHAMMED KUNCHI, RESIDING AT `JAMSHEELA'
CHUNGAM, PAPPINISSERI AMSOM, CHUNGAM,
AROLI DESOM, KANNUR TALUK.

BY ADV. SRI.M.K.SUMOD
SRI.KAUSER EDAPPAGATH

RESPONDENTS:

1. **S.P. SHAFEEQUE, S/O.N. MOHAMOOD,**
   AGED 30 YEARS, EMPLOYED IN ABROAD,
   SAFIA MANZIL, VALAPATTANAM,
   KANNUR TALUK, KANNUR DISTRICT.

2. **C.K. MAHAMOOD MOIDU, S/O. MOIDU,**
   AGED 40 YEARS, BUSINESS, KELOTH HOUSE,
   P.O. KANNUR, KANNUR TALUK, KANNUR AMSOM,
   KANNOTHUMCHAL DESOM.

3. **P.M. ABDUL SHUKOOR, S/O.P. MAMMU,**
   AGED 35 YEARS, BUSINESS,
   PUTHIYA MADATHUMMAL HOUSE, VALAPATTANAM
   AMSOM DESOM, KANNUR TALUK, KANNUR DISTRICT.

4. **C.K. ZAREENA, W/O.P.R. HARIS,**
   AGED 37 YEARS, NO OCCUPATION, P.O. KANNUR,
   KANNUR TALUK, KELOTH HOUSE, KANNUR AMSOM,
   KANNOTHUMCHAL DESOM.

5. **C.P. MAHAMOOD, D/O.T.T.P. KUNHAMOO,**
   AGED 45 YEARS, BUSINESS, UDUMBUMTHALA HOUSE,
   THIRUVANGAD AMSOM, DESOM, THALASSERY.

6. V.B. ABDUL JABBAR, S/O. A.T. MAMU,
AGED 38 YEARS, BUSINESS, VALAPPIL BADIKAPURATH
VALAPATTANAM AMSOM, DESOM, KANNUR TALUK,
KANNUR DISTRICT.

7. T.T.P. RAZIA, W/O.P. KOYA,
AGED 36 YEARS, NO OCCUPATION,
UDUMBUMTHALA HOUSE, THIRUVANGAD AMSOM,
DESOM, THALASSERY.

8. U. MUHAMMED, S/O. T.T.P. KUTTIALI,
AGED 29 YEARS, BUSINESS, UDUMBUMTHALA HOUSE,
KANNUR AMSOM, MUZHATHEDAM DESOM,
KANNUR TALUK, KANNUR DISTRICT.

9. V.K. SUBAIDA, W/O.MOOSA C.P.
AGED 50 YEARS, NO OCCUPATION,
`MOHAMMADE' MANJAKKEL, P.O. MAHE.

10. SAHADHARMAN, S/O. KUNHIRAMAN,
AGED 37 YEARS, BUSINESS, `SAHALAYAM',
PAPPINISSERI AMSOM, DESOM,
TALIPARAMBA TALUK.

11. V.K. FIROZA, W/O.MAHAMOOD MOIDU,
AGED 35 YEARS, NO OCCUPATION, `MOHAMMADE',
MANJAKKEL, MAHE.

BY ADV. SRI.K.P.HAREENDRAN -- R7

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 28417/2006 G

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE IA NO. 1001/03 IN OS NO. 412/94 DT. 27/2/2003.

EXT.P2. COPY OF THE COUNTER IN IA NO. 1001/2003 DT. 26/3/03.

EXT.P3. COPY OF THE ORDER IN IA NO. 1001/2003 OF SUBORDINATE JUDGE, THALASSERY DT. 7/6/03.

RESPONDENT'S EXHIBITS

EXT.R7A. COPY OF THE PARTNERSHIP DEED DT. 15/3/91.

EXT.R7B. COPY OF THE PRELIMINARY DECREE DT. 21/12/96 IN O.S. NO. 412/94.

EXT.R7C. COPY OF THE PRELIMINARY JUDGMENT IN OS NO. 412/94 OF THE ADDL. SUB COURT, THALASSERY.

EXT.R7D. COPY OF THE MEMO DT. 17/6/02.

EXT.R7E. COPY OF THE PLAN OF THE SUIT PROPERTY.

True copy

tga

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 28417 OF 2006

= = = = = = = = = = = = = = =

Dated this the 10th day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Thalassery in O.S.412/94. It is an application filed by a third party that she be impleaded in the final decree proceedings in O.S.412/94. The Court below on a consideration of the materials held that she has no locustandi to contest the suit and therefore dismissed the application.

2. S.29 of the Indian Partnership Act envisages transfer. As per Section 2((1),

> "A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a change on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entities the transferee only to receive the share of profits of the transferring partner, and the

transferee shall accept the account of profits agreed to by the partners."

2. Section 29(2) deal with a situation when the firm is dissolved or when the transferring partner ceased to be partner. Here a third party wants to get herself impleaded as a party as she is a purchaser by virtue of transfer. The right which she is entitled to is really contemplated u/s 29 of the Indian Partnership Act. Therefore, it may not be correct to shut out her entry to the Court because ultimately she is a person who is entitled to receive the amount which the original partner is entitled to get from whom she had purchased the property. If the transfer is proved and her entitlement is also proved then naturally she may be entitled to the relief. Therefore, it is only just and equitable that she is also impleaded as a party and heard in the matter. I make it very clear that the rights which she is entitled to will be only within four corners of the provisions of the Indian Partnership Act and nothing else.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-